

# Introduction

## Chapter 1 - Historical Background

### Introduction

- Roots of the Indian Constitution In British era laws.
- Chronological order of the laws.
  - The Company Rule (1773-1858)
  - The Crown Rule (1858-1947) (British Gov. took complete control)
- The British came to India in 1600 as traders, in the form of EIC, which had the exclusive right of trading in India under a charter granted by Queen Elizabeth I. In 1765, the Company, which till now had purely trading functions obtained the 'diwani' (i.e., rights over revenue and civil justice) of Bengal, Bihar and Orissa. This started its career as a territorial power. In 1858, in the wake of the 'sepoy mutiny', the British Crown assumed direct responsibility for the governance of India. This rule continued until India was granted independence on August 15, 1947.

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### Laws under Company Rule

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### Regulating Act of 1773.

- First interference by the British Govt in the affairs of the East India Company (EIC).
  - Court of Directors (Governing body of the company) required to report on Revenue, Military & Civil Affairs.
- Foundation of Central Administration in India.
  - Gov of Bengal designated as Gov-Gen of Bengal.
    - \* Gov-Gen made superior to Govs of Bombay & Madras.
    - \* Estb Executive Council of 4 members to assist him.
    - \* First Gov-Gen was Warren Hastings.
- Estb SC at Calcutta – 1 Chief Justice & 3 Judges.
- Prohibited Company Servants from private practice.

### **Pitt's India Act of 1784.**

- Created Board of Control to manage political functions.
  - BoC given complete control of Civil, Military & Revenue operations.
- Court of Directors were limited to commercial affairs only. (Thus, estb of double government)
- Company Territories termed as 'British Possessions in India'.

### **Charter Act of 1833.**

- Gov-Gen of Bengal made Gov-Gen of India.
  - Vested with all Civil & Military powers.
  - **Exclusive** Legislative powers over all of British India (thus depriving governor of Bombay, Madras).
  - Lord William Bentinck became first Gov-Gen of India.
- EIC was made purely administrative body with its commercial functions abolished.
- Also attempted to introduce open competition for the Civil Services (ofc for Indians) but failed due to opposition from the Court of Directors.

### **Charter Act of 1853.**

- It separated for the first time, the legislative and executive functions of the Governor-General's council. It provided for addition of 6 new members called legislative councillors to the council. In other words, it established a separate Gov-Gen's legislative council (later known as Indian Legislative Council {ILC})
  - First special mechanism to legislate.
- Open Competition for Civil Services was introduced.
- Macaulay Committee (on Civil Services) was appointed in 1854.
- Provided for provincial representation in ILC.
  - 4 out of 6 ILC members were appointed by local (provincial) Governments of Bombay, Madras, Bengal & Agra.

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### **Laws under Crown Rule**

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### **Government of India Act of 1858. (Act for the Good Gov. of India)**

- Abolished EIC. All of its powers shifted to The Crown.
  - Abolished Board of Control and Court of Directors.
- Designation of Gov-Gen of India changed to the Viceroy of India.

- Lord Canning became the first Viceroy of India.
- Viceroy was basically a direct representative of British Crown in India.
- Estb Secretary of State (SoS) for India.
  - With complete administrative authority.
  - Member of the British Cabinet.
  - Estb a 15 member Council of India to assist the SoS
    - \* (SoS was Chairman of the Council).

#### **Indian Councils Act of 1861.**

- Provided for Viceroy to nominate Indians to ILC.
- Decentralization of powers by restoring leg. powers to the Provincial governments of Madras & Bombay.
- New Legislative Councils for Bengal, NWP (North West Province) & Punjab.
- Introduced 'portfolio system' in Viceroy's Council.
- Power to issue Ordinances given to the Viceroy without the concurrence of the ILC during an emergency.

#### **Indian Councils Act of 1892.**

- Increased Indian membership in ILC & Provincial LCs (but official members still in majority).
- Increased functions and powers of ILC & PLCs.
  - Power to discuss Budget & addressing questions to executive.
- Provided for nomination of some Indian members to ILC on the recommendation of PLCs & Bengal Chamber of Commerce.
- Provided for nomination of Indian Members in PLCs by the Governor on the recommendation of Municipalities, Universities, trade associations, etc. ### Indian Councils Act of 1909.
- Also known as Morley (SoS) - Minto (Viceroy) Reforms.
- It considerably increased the size of the legislative councils, both Central and provincial.
- It retained official majority in Central LC but allowed the PLCs to have non official majority.
- Provided for Indian member to Exec. Council of Viceroy & Governors.
- Introduced Separate Electorates for Muslims in ILC & PLCs.

- Provided for separate representation for Univs, Presidency Corporations, Chambers of Commerce & Zamindars. Government of India Act of 1919. Also known as Montagu-Chelmsford Reforms. Introduced separate Legislative Subject Lists. Dyarchy introduced in Provinces. Provincial list divided into Transferred and Reserved Subjects. Bicameralism & Direct Election (limited Franchise) introduced to ILC. 3 of 6 Viceroy's Exec Council to be Indians. Separate Electorates extended to Sikhs, Anglo-Indians, Indian Christians & Europeans. Created High Commissioner's Office in London. Prov to estb Central Public Service Commission (Estb in 1926). Created Provincial Budgets (power given to PLCs). Simon Commission (1927). Constituted to review the working of GoI Act of 1919. Boycotted by all Parties as the Commission was All-White. Made several recommendations in its report in 1930: Abolition of Dyarchy/ Estb a Federation of Princely States & British Provinces. Three Round Table Conferences were called to discuss.

Communal Award (1932). Announced Separate Electorates for SCs/ Opposed by Gandhi/ Poona Pact signed to give Reservations instead of Sep Elec. Government of India Act of 1935. Prov for All-India Federation (with Princely States & Provinces). Federal, Provincial & Concurrent Lists estb. Residuary powers given to Viceroy. Abolished Dyarchy, introduced Provincial Autonomy. Bicameralism introduced in PLCs. Abolished Council of India. Prov for estb of Reserve Bank of India. Prov to estb Provincial Public Service Commission & Joint PSC. Prov for estb Federal Court (Estb 1937).

Indian Independence Act of 1947. Result of the acceptance of the Mountbatten Plan. India declared as Independent & Sovereign. Prov for Partition of India. Replaced Viceroy with Gov-Gen of India. Secretary of State abolished. Constituent Assembly given full powers to legislate. Granted freedom to Princely States. Gov-Gen of India and Govs of Provinces were declared as nominal heads only.